

## SCHEDULES

### SCHEDULE 3

Section 516

#### <sup>F1</sup>... SAYE OPTION SCHEMES

##### Textual Amendments

- F1** Word in [Sch. 3](#) title omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 103, 146](#) (with [Sch. 8 paras. 147-157](#))

### PART 1

#### INTRODUCTION

##### *[<sup>F2</sup>Introduction to Schedule 3] SAYE option schemes*

##### Textual Amendments

- F2** Words in [Sch. 3 para. 1](#) cross-heading substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 104, 146](#) (with [Sch. 8 paras. 147-157](#))

1 [<sup>F3</sup>(A1) For the purposes of the SAYE code an SAYE option scheme is a Schedule 3 SAYE option scheme if the requirements of Parts 2 to 7 of this Schedule are met in relation to the scheme.]

(3) The requirements consist of general requirements (see Part 2) and requirements as to—

the eligibility of individuals to participate in a scheme (see Part 3),  
the shares to which schemes can apply (see Part 4),  
the existence of a linked [<sup>F4</sup>savings arrangement] (see Part 5),  
the share options that may be granted under the scheme (see Part 6), and  
the exchange of share options (see Part 7).

[<sup>F5</sup>(4) Sub-paragraph (A1) is subject to Part 8 of this Schedule which—

- (a) requires notice of a scheme to be given to Her Majesty's Revenue and Customs (“HMRC”) in order for the scheme to be a Schedule 3 SAYE option scheme (see paragraph 40A(1)),
- (b) provides for a scheme in relation to which such notice is given to be a Schedule 3 SAYE option scheme (see paragraph 40A(4)), and
- (c) gives power to HMRC to enquire into a scheme and to decide that the scheme should not be a Schedule 3 SAYE option scheme (see paragraphs 40F to 40I).]

*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

#### Textual Amendments

- F3** Sch. 3 para. 1(A1) substituted for Sch. 3 para. 1(1)(2) (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 105(2)**, 146 (with Sch. 8 paras. 147-157)
- F4** Words in Sch. 3 para. 1(3) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 618(2)** (with Sch. 2)
- F5** Sch. 3 para. 1(4) substituted (6.4.2014) by Finance Act 2014 (c. 26), **Sch. 8 paras. 105(3)**, 146 (with Sch. 8 paras. 147-157)

#### *SAYE option schemes*

- 2 (1) In the SAYE code an “SAYE option scheme” means (in accordance with section 516(4)) a scheme established by a company which provides—
- (a) for share options to be granted to employees and directors, and
  - (b) for the shares acquired by the exercise of the share options to be paid for in the way mentioned in paragraph 24 (payments for shares to be linked to approved [<sup>F6</sup>savings arrangements]).
- (2) In the SAYE code, in relation to an SAYE option scheme—
- “participant” means an individual who has been granted (but has not yet exercised) share options under the scheme (“the options”);
  - “participate” means obtain and exercise share options under the scheme;
  - “the scheme organiser” means the company which has established the scheme.

#### Textual Amendments

- F6** Words in Sch. 3 para. 2(1)(b) substituted (6.4.2005) by Income Tax (Trading and Other Income) Act 2005 (c. 5), s. 883(1), **Sch. 1 para. 618(3)** (with Sch. 2)

#### *Group schemes*

- 3 (1) An SAYE option scheme established by a company that controls one or more other companies (a “parent scheme company”) may extend to all or any of those other companies.
- (2) In the SAYE code an SAYE option scheme established by a parent scheme company which so extends is called a “group scheme”.
- (3) In relation to a group scheme a “constituent company” means—
- (a) the parent scheme company, or
  - (b) any other company to which for the time being the scheme is expressed to extend.
- (4) Paragraph 46 deals with jointly owned companies and companies controlled by them.

*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

## PART 2

### GENERAL REQUIREMENTS <sup>F7</sup>...

#### Textual Amendments

- F7** Words in [Sch. 3 Pt. 2](#) title omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 106, 146](#) (with [Sch. 8 paras. 147-157](#))

#### *General requirements <sup>F8</sup>...: introduction*

#### Textual Amendments

- F8** Words in [Sch. 3 para. 4 cross-heading](#) omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 107, 146](#) (with [Sch. 8 paras. 147-157](#))

- 4 An SAYE option scheme must meet the requirements of—  
paragraph 5 (general restriction on contents of scheme),  
paragraph 6 (all-employee nature of scheme),  
paragraph 7 (participation on similar terms), and  
paragraph 8 (no preferential treatment for directors and senior employees).

#### *General restriction on contents of scheme*

- [<sup>F9</sup>5 (1) The purpose of the scheme must be to provide, in accordance with this Schedule, benefits for employees and directors in the form of share options.  
(2) The scheme must not provide benefits to employees or directors otherwise than in accordance with this Schedule.  
(3) For example, the scheme must not provide cash as an alternative to share options or shares which might otherwise be acquired by the exercise of share options.]

#### Textual Amendments

- F9** Sch. 3 para. 5 substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 108, 146](#) (with [Sch. 8 paras. 147-157](#))

#### *All-employee nature of scheme*

- 6 (1) The scheme must provide that every person who meets the conditions in sub-paragraph (2) is eligible to participate in the scheme.  
(2) A person (“E”) meets the conditions in this sub-paragraph if—  
(a) E is an employee or a full-time director of the scheme organiser or (in the case of a group scheme) of a constituent company,  
(b) E has been such an employee or director at all times during a qualifying period of not more than 5 years,

*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

- [<sup>F10</sup>(c) E's earnings from the office or employment within paragraph (a) are (or would be if there were any) general earnings to which section 15 applies (earnings for year when employee UK resident), [<sup>F11</sup>and]
- <sup>F12</sup>(ca) .....]
- (d) E is not ineligible under paragraph 11 (the “no material interest” requirement).
- (3) The scheme must not contain any feature which has or is likely to have the effect of discouraging any description of persons who—
- meet the conditions in sub-paragraph (2), or
  - met those conditions before ceasing to be persons within sub-paragraph (2) (a),
- from actually participating in the scheme.
- (4) Sub-paragraph (3) does not apply to any provision required or authorised by a provision of this Schedule.

#### Textual Amendments

- F10** Sch. 3 para. 6(2)(c)(ca) substituted for Sch. 3 para. 6(2)(c) (with effect in accordance with Sch. 7 para. 81 of the amending Act) by [Finance Act 2008 \(c. 9\)](#), [Sch. 7 para. 42](#)
- F11** Word in Sch. 3 para. 6(2)(c) inserted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 41\(1\)\(a\)](#) (with [Sch. 46 para. 41\(2\)](#))
- F12** Sch. 3 para. 6(2)(ca) omitted (with effect in accordance with Sch. 46 para. 72 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 46 para. 41\(1\)\(b\)](#) (with [Sch. 46 para. 41\(2\)](#))

#### *Participation on similar terms*

- 7 (1) The requirements of this paragraph are—
- that every person who meets the conditions in paragraph 6(2) (all-employee nature of scheme) must be eligible to participate in the scheme on similar terms, and
  - that every person who participates in the scheme must actually do so on similar terms.
- (2) The requirements of this paragraph are not infringed by the fact that the rights of those participating in the scheme to obtain and exercise share options vary according to—
- the levels of their remuneration,
  - the length of their service, or
  - any similar factors.

#### *No preferential treatment for directors and senior employees*

- 8 (1) The requirement of this paragraph is that, if the scheme organiser is a member of a group of companies, the scheme does not and is not likely to have the effect of conferring benefits wholly or mainly—
- on directors of companies in the group, or
  - on employees of companies in the group who receive the higher or highest levels of remuneration.

**Changes to legislation:** There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

(2) “A group of companies” means a company and any other companies of which it has control.

PART 3

ELIGIBILITY OF INDIVIDUALS TO PARTICIPATE IN SCHEME

*Requirements relating to the eligibility of individuals: introduction*

9 An SAYE option scheme must meet the requirements of—  
paragraph 10 (the employment requirement),  
F13 ...

Textual Amendments

F13 Words in Sch. 3 para. 9 omitted (with effect in accordance with Sch. 2 para. 43 of the amending Act) by virtue of Finance Act 2013 (c. 29), Sch. 2 para. 40

*The employment requirement*

10 (1) The scheme must ensure that an individual is not eligible to participate in the scheme at a particular time unless the individual is then a director or employee of—  
(a) the scheme organiser, or  
(b) in the case of a group scheme, a constituent company.  
(2) The requirement of this paragraph is not infringed by a provision of the scheme required or authorised by a provision of this Schedule.

*The “no material interest” requirement*

F1411 .....

Textual Amendments

F14 Sch. 3 paras. 11-16 omitted (with effect in accordance with Sch. 2 para. 43 of the amending Act) by virtue of Finance Act 2013 (c. 29), Sch. 2 para. 41

*Meaning of “material interest”*

F1412 .....

Textual Amendments

F14 Sch. 3 paras. 11-16 omitted (with effect in accordance with Sch. 2 para. 43 of the amending Act) by virtue of Finance Act 2013 (c. 29), Sch. 2 para. 41

*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

*Material interest: options and interests in SIPs*

<sup>F14</sup>13 .....

**Textual Amendments**

**F14** Sch. 3 paras. 11-16 omitted (with effect in accordance with Sch. 2 para. 43 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 41](#)

*Meaning of “associate”*

<sup>F14</sup>14 .....

**Textual Amendments**

**F14** Sch. 3 paras. 11-16 omitted (with effect in accordance with Sch. 2 para. 43 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 41](#)

*Meaning of “associate”: trustees of employee benefit trust*

<sup>F14</sup>15 .....

**Textual Amendments**

**F14** Sch. 3 paras. 11-16 omitted (with effect in accordance with Sch. 2 para. 43 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 41](#)

*Meaning of “associate”: trustees of discretionary trust*

<sup>F14</sup>16 .....

**Textual Amendments**

**F14** Sch. 3 paras. 11-16 omitted (with effect in accordance with Sch. 2 para. 43 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 41](#)

**PART 4**

SHARES TO WHICH SCHEMES CAN APPLY

*Requirements relating to shares that may be subject to share options: introduction*

- 17
- (1) An SAYE option scheme must meet the requirements of—  
paragraph 18 (shares must be ordinary shares of certain companies),  
paragraph 19 (requirements as to listing),  
paragraph 20 (shares must be fully paid up and not redeemable), [<sup>F15</sup>and]  
<sup>F16</sup>  
...

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)*

paragraph 22 (requirements as to other shareholdings).

[<sup>F17</sup>(1A) Sub-paragraph (1) and the other paragraphs of this Part are subject to paragraph 37(6B).]

(2) In this Part “eligible shares” means shares which may be acquired by the exercise of share options under the scheme.

#### Textual Amendments

- F15** Word in Sch. 3 para. 17(1) inserted (with effect in accordance with Sch. 2 para. 67 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), **Sch. 2 para. 60(a)**
- F16** Words in Sch. 3 para. 17(1) omitted (with effect in accordance with Sch. 2 para. 67 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), **Sch. 2 para. 60(b)**
- F17** [Sch. 3 para. 17\(1A\)](#) inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 8 paras. 109, 146** (with [Sch. 8 paras. 147-157](#))

#### *Shares must be ordinary shares of certain companies*

- 18 Eligible shares must form part of the ordinary share capital of—
- (a) the scheme organiser,
  - (b) a company which has control of the scheme organiser, or
  - (c) a company which either is, or has control of, a company which is a member of a consortium owning either the scheme organiser or a company having control of the scheme organiser.

#### *Requirements as to listing*

- 19 (1) Eligible shares must be—
- (a) shares of a class listed on a recognised stock exchange,
  - (b) shares in a company which is not under the control of another company, <sup>F18</sup>...
  - [<sup>F19</sup>(ba) shares in a company which is subject to an employee-ownership trust (within the meaning of paragraph 27(4) to (6) of Schedule 2), or]
  - (c) shares in a company which is under the control of a listed company.
- (2) A “listed company” is a company whose shares are listed on a recognised stock exchange, other than—
- (a) a close company, or
  - (b) a company that would be a close company if resident in the United Kingdom.
- [<sup>F20</sup>(3) But a company is not a close company for the purposes of sub-paragraph (2) if it is subject to an employee-ownership trust (within the meaning of paragraph 27(4) to (6) of Schedule 2).]

#### Textual Amendments

- F18** Word in [Sch. 3 para. 19\(1\)\(b\)](#) omitted (1.10.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), **Sch. 37 para. 20(2)(4)**
- F19** [Sch. 3 para. 19\(1\)\(ba\)](#) inserted (1.10.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 37 para. 20(2)(4)**
- F20** [Sch. 3 para. 19\(3\)](#) inserted (1.10.2014) by [Finance Act 2014 \(c. 26\)](#), **Sch. 37 para. 20(3)(4)**

*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

*Shares must be fully paid up and not redeemable*

- 20 Eligible shares must be—
- (a) fully paid up, and
  - (b) not redeemable.

*Only certain kinds of restriction allowed*

<sup>F21</sup>21 .....

**Textual Amendments**

**F21** Sch. 3 para. 21 omitted (with effect in accordance with Sch. 2 para. 67 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 61](#)

*Requirements as to other shareholdings*

- 22 (1) The majority of the issued shares of the same class as the eligible shares must be—
- (a) employee-control shares, or
  - (b) open market shares,
- unless the eligible shares are shares in a company whose ordinary share capital consists of shares of one class only.
- (2) Shares in a company are “employee-control shares” if—
- (a) the persons holding the shares are, by virtue of their holding, together able to control the company, and
  - (b) those persons are or have been employees or directors of the company or of another company which is under the control of the company.
- (3) Shares in a company are “open market shares” if the persons holding the shares are not—
- (a) persons who acquired their shares as a result of a right conferred on them or an opportunity afforded to them as a director or employee of the scheme organiser or any other company, and not as a result of an offer to the public, or
  - (b) trustees holding shares on behalf of persons who acquired their beneficial interests in the shares as mentioned in paragraph (a), or
  - (c) in the case of shares which—
    - (i) are not of a class listed on a recognised stock exchange, and
    - (ii) are in a company which is under the control of a listed company (as defined by paragraph 19(2)),
 companies which have control of the company whose shares are in question or of which that company is an associated company.



*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)*

PART 5

REQUIREMENT FOR LINKED SAVINGS [F22ARRANGEMENT]

Textual Amendments

**F22** Word in Sch. 3 Pt. 5 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 618(5)(a)** (with [Sch. 2](#))

*Requirements as to linked savings [F23arrangement] : introduction*

Textual Amendments

**F23** Word in Sch. 3 para. 23 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 618(5)(a)** (with [Sch. 2](#))

23 An SAYE option scheme must meet the requirements of—  
paragraph 24 (payments for shares to be linked to approved [F24savings arrangements]), and  
paragraph 25 (requirements as to contributions to [F24savings arrangements]).

Textual Amendments

**F24** Words in Sch. 3 para. 23 substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 618(5)(b)** (with [Sch. 2](#))

*Payments for shares to be linked to approved savings [F25arrangements]*

Textual Amendments

**F25** Word in Sch. 3 para. 24 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 618(6)(a)** (with [Sch. 2](#))

24 (1) The scheme must provide for shares acquired by the exercise of share options granted under the scheme to be paid for with money not exceeding the amount of repayments made and any interest paid under a [F26certified SAYE savings arrangement] which has been approved by [F27an officer of Revenue and Customs] for the purposes of this Schedule [F28(“the approved savings arrangement”)].

F29(2) . . . . .

Textual Amendments

**F26** Words in Sch. 3 para. 24(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), **Sch. 1 para. 618(6)(b)** (with [Sch. 2](#))  
**F27** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), **Sch. 4 para. 102(1)**; S.I. 2005/1126, art. 2(2)(h)

*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

- F28** Words in Sch. 3 para. 24(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(6\)\(c\)](#) (with Sch. 2)
- F29** Sch. 3 para. 24(2) repealed (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(7\), Sch. 3](#) (with Sch. 2)

*Requirements as to contributions to savings [F30 arrangements]*

**Textual Amendments**

- F30** Word in Sch. 3 para. 25 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(8\)\(a\)](#) (with Sch. 2)

- 25 (1) The scheme must provide for a person's contributions under the [F31 the approved savings arrangement] to be of an amount that will secure, as nearly as possible, repayment of an amount equal to the option price.
- (2) The "option price" means the amount payable, on exercising share options granted under the scheme, in order to acquire the maximum number of shares that may be acquired under them (see paragraph 28).
- (3) The scheme must neither—
- permit the aggregate amount of a person's contributions under [F32 certified SAYE savings arrangements linked to [F33 Schedule 3] SAYE option schemes] to exceed [F34 £500] per month, nor
  - impose a minimum on the amount of a person's contributions which exceeds £10 per month.
- (4) The Treasury may by order amend sub-paragraph (3) by substituting for any amount for the time being specified there an amount specified in the order.

**Textual Amendments**

- F31** Words in Sch. 3 para. 25(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(8\)\(b\)](#) (with Sch. 2)
- F32** Words in Sch. 3 para. 25(3)(a) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(8\)\(c\)](#) (with Sch. 2)
- F33** Words in Sch. 3 para. 25(3)(a) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\), Sch. 8 paras. 110, 146](#) (with Sch. 8 paras. 147-157)
- F34** Sum in Sch. 3 para. 25(3)(a) substituted (with effect in accordance with art. 1(2) of the amending S.I.) by [The Income Tax \(Earnings and Pensions\) Act 2003 \(Amendment to SAYE Option Schemes Contributions Limit\) Order 2014 \(S.I. 2014/402\), arts. 1\(1\), 2\(2\)](#)

*Repayments under a savings [F35 arrangement] : whether bonuses included*

**Textual Amendments**

- F35** Word in Sch. 3 para. 26 heading substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(9\)\(a\)](#) (with Sch. 2)

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)*

- 26 (1) For the purposes of this Schedule repayments under a [<sup>F36</sup>certified SAYE savings arrangement] may be taken as including, or as not including, a bonus.
- (2) The bonus may either be the maximum bonus under that [<sup>F37</sup>arrangement] or a lesser bonus.
- (3) An SAYE option scheme must require the question whether repayments are to be taken as including bonuses to be determined at the time when share options are granted.

#### Textual Amendments

- F36** Words in Sch. 3 para. 26(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 618\(9\)\(b\)](#) (with [Sch. 2](#))
- F37** Word in Sch. 3 para. 26(2) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 618\(9\)\(c\)](#) (with [Sch. 2](#))

## PART 6

### REQUIREMENTS ETC. RELATING TO SHARE OPTIONS

#### *Requirements etc. relating to share options: introduction*

- 27 (1) An SAYE option scheme must meet the requirements of—  
paragraph 28 (requirements as to price for acquisition of shares),  
paragraph 29 (share options must not be transferable),  
paragraph 30 (time for exercising options: general),  
<sup>F38</sup> ...  
paragraph 32 (exercise of options: death), [<sup>F39</sup>and]  
<sup>F40</sup> ...  
paragraph 34 (exercise of options: scheme-related employment ends).
- (2) An SAYE option scheme may make any provision authorised by—  
paragraph 36 (exercise of options: employment in associated company at bonus date), and  
paragraph 37 (exercise of options: company events).

#### Textual Amendments

- F38** Words in Sch. 3 para. 27(1) omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 8\(a\)](#) (with [Sch. 2 paras. 16, 17](#))
- F39** Word in Sch. 3 para. 27(1) inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 8\(b\)](#) (with [Sch. 2 paras. 16, 17](#))
- F40** Words in Sch. 3 para. 27(1) omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 8\(c\)](#) (with [Sch. 2 paras. 16, 17](#))

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)*

*Requirements as to price for acquisition of shares*

- 28 (1) The price at which shares may be acquired by the exercise of a share option granted under the scheme—
- (a) must be stated at the time when the option is granted, and
  - (b) must not be manifestly less than 80% of the market value of shares of the same class<sup>F41</sup>—
    - (i) at that time, or
    - (ii) at such earlier time as may be determined in accordance with guidance issued by the Commissioners for Her Majesty's Revenue and Customs.]

This is subject to <sup>F42</sup>sub-paragraph (3)].

<sup>F43</sup>(2) .....

- (3) The scheme may provide for one or more of the following—
- (a) the price at which shares may be acquired by the exercise of a share option granted under the scheme,
  - (b) the number of shares which may be so acquired, or
  - (c) the description of shares which may be so acquired,
- to be varied so far as necessary to take account of a variation in the share capital of which the shares form part.

- <sup>F44</sup>(3A) If the scheme makes provision under sub-paragraph (3), the variation or variations made under that provision to take account of a variation in any share capital must (in particular) secure—
- (a) that the total market value of the shares which may be acquired by the exercise of the share option is immediately after the variation or variations substantially the same as what it was immediately before the variation or variations, and
  - (b) that the total price at which those shares may be acquired is immediately after the variation or variations substantially the same as what it was immediately before the variation or variations.

(3B) Sub-paragraph (3) does not authorise any variation which would result in the requirements of the other paragraphs of this Schedule not being met in relation to the share option.]

<sup>F45</sup>(4) .....

- <sup>F46</sup>(5) At the time a share option is granted—
- (a) it must be stated whether or not the shares which may be acquired by the exercise of the option may be subject to any restriction, and
  - (b) if so, the details of the restriction must also be stated.
- (6) For the purposes of this paragraph the market value of shares subject to a restriction is to be determined as if they were not subject to the restriction.]

**Textual Amendments**

**F41** Words in Sch. 3 para. 28(1)(b) substituted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 3 para. 6\(2\)\(a\)](#)

**F42** Words in Sch. 3 para. 28(1) substituted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), [Sch. 3 para. 6\(2\)\(b\)](#)

**Changes to legislation:** There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

- F43** Sch. 3 para. 28(2) omitted (15.9.2016) by virtue of [Finance Act 2016 \(c. 24\)](#), [Sch. 3 para. 6\(3\)](#)
- F44** Sch. 3 para. 28(3A)(3B) inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 111\(2\)](#), 146 (with [Sch. 8 paras. 147-157](#))
- F45** Sch. 3 para. 28(4) omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 111\(3\)](#), 146 (with [Sch. 8 paras. 147-157](#))
- F46** Sch. 3 para. 28(5)(6) inserted (with effect in accordance with Sch. 2 para. 67 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 62](#)

*Share options must not be transferable*

- 29 (1) The scheme must ensure that share options granted to a participant are not capable of being transferred by the participant.
- (2) Paragraph 32 provides for the exercise of the options where the participant has died.

*Time for exercising options: general*

- 30 (1) The scheme must ensure that share options granted under it must not be capable of being exercised—
- before the bonus date, or
  - later than 6 months after that date.
- (2) However, in sub-paragraph (1)—
- paragraph (a) is subject to paragraphs [<sup>F47</sup>32,] 34 and 37 (exercise of options in the event of death, <sup>F48</sup>... scheme-related employment ending or certain events occurring in relation to the company), and
  - paragraph (b) is subject to paragraph 32.
- (3) In the SAYE code “the bonus date” means the date on which repayments under [<sup>F49</sup>the approved savings arrangement] are due.
- (4) For this purpose repayments are to be regarded as due as follows—
- if the repayments are to be taken as including the maximum bonus (see paragraph 26(2)), on the earliest date on which that bonus is payable, and
  - in any other case, on the earliest date on which a bonus is payable.

**Textual Amendments**

- F47** Word in Sch. 3 para. 30(2)(a) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 9\(a\)](#) (with [Sch. 2 paras. 16, 17](#))
- F48** Words in Sch. 3 para. 30(2)(a) omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 9\(b\)](#) (with [Sch. 2 paras. 16, 17](#))
- F49** Words in Sch. 3 para. 30(3) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 618\(10\)](#) (with [Sch. 2](#))

*Requirement to have a “specified age”*

<sup>F50</sup>31 .....

*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

#### Textual Amendments

- F50** Sch. 3 para. 31 omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 10](#) (with [Sch. 2 paras. 16, 17](#))

#### *Exercise of options: death*

- 32 The scheme must provide that, if a participant dies before exercising the options, they may be exercised [<sup>F51</sup>at any time] on or after the date of death but not later than—
- (a) 12 months after the date of death, in a case where the participant dies before the bonus date, or
  - (b) 12 months after the bonus date, in a case where the participant dies on or within 6 months after that date.

#### Textual Amendments

- F51** Words in [Sch. 3 para. 32](#) inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 112, 146](#) (with [Sch. 8 paras. 147-157](#))

#### *Exercise of options: reaching specified age without retiring*

<sup>F52</sup>33 .....

#### Textual Amendments

- F52** Sch. 3 para. 33 omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 11](#) (with [Sch. 2 para. 17](#))

#### *Exercise of options: scheme-related employment ends*

- 34 (1) The scheme must provide that, if a participant (“P”) no longer holds scheme-related employment (see paragraph 35), the options are exercisable as set out in subparagraphs (2) to (4).
- (2) In a case where P ceases to hold the scheme-related employment because of—
- (a) injury or disability or redundancy within the meaning of ERA 1996 [<sup>F53</sup> or ER(NI)O 1996 ], <sup>F54</sup>...
  - (b) retirement <sup>F55</sup> ...,
  - [<sup>F56</sup>(c) a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006, or
  - (d) if P holds office or is employed in a company which is an associated company (as defined in paragraph 35(4)) of the scheme organiser, that company ceasing to be an associated company of the scheme organiser by reason of a change of control (as determined in accordance with sections 450 and 451 of CTA 2010),]
- the options may only be exercised within 6 months after the termination date.

*Changes to legislation: There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)*

- (3) In a case where P ceases to hold the scheme-related employment for any other reason, share options granted more than 3 years before the termination date either—
- (a) may not be exercised, or
  - (b) may only be exercised within 6 months after the termination date,
- according to which of these alternatives is specified in the scheme.
- (4) Subject to any provision made under sub-paragraph (5), in a case where P ceases to hold the scheme-related employment for any reason other than one within sub-paragraph (2)(a) [<sup>F57</sup>to (d)], share options granted 3 years or less before the termination date may not be exercised at all.
- (5) The scheme may [<sup>F58</sup>make provision about the time when the options may be exercised] in a case where P ceases to hold the scheme-related employment only because—
- <sup>F59</sup>(a) .....  
(b) it relates to a business or part of a business which is transferred to a person who is not an associated company of the scheme organiser [<sup>F60</sup>where the transfer is not a relevant transfer within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006].
- <sup>F61</sup> ...
- [<sup>F62</sup>(5A) If the scheme makes provision by virtue of sub-paragraph (5), the provision must be either—
- (a) that the options may be exercised within 6 months after the termination date, or
  - (b) that the options may be exercised within 6 months after the date (if any) when P ceases to hold the employment which (before the termination date) was the scheme-related employment for a reason within sub-paragraph (2) (a) [<sup>F63</sup>to (d)].]
- (6) This paragraph has effect subject to paragraph 30(1)(b) (options must not be capable of being exercised later than 6 months after bonus date).
- (7) In this paragraph—
- “scheme-related employment” means the office or employment by reference to which the person satisfies the condition in paragraph 10(1) (“the employment requirement”);
- “the termination date” means the date when P ceases to hold the scheme-related employment (see paragraph 35).

#### Textual Amendments

- F53** Words in Sch. 3 para. 34(2)(a) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 11\(2\)](#)
- F54** Word in Sch. 3 para. 34(2) omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 23\(2\)\(a\)](#) (with [Sch. 2 para. 23\(4\)](#))
- F55** Words in Sch. 3 para. 34(2)(b) omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 12](#) (with [Sch. 2 para. 17](#))
- F56** Sch. 3 para. 34(2)(c)(d) inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 23\(2\)\(b\)](#) (with [Sch. 2 para. 23\(4\)](#))
- F57** Words in Sch. 3 para. 34(4) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 23\(3\)](#) (with [Sch. 2 para. 23\(4\)](#))



*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

- F58** Words in Sch. 3 para. 34(5) substituted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 11\(3\)\(a\)](#)
- F59** Sch. 3 para. 34(5)(a) and word omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 113\(a\), 146](#) (with [Sch. 8 paras. 147-157](#))
- F60** Words in Sch. 3 para. 34(5)(b) inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 113\(b\), 146](#) (with [Sch. 8 paras. 147-157](#))
- F61** Words in Sch. 3 para. 34(5) repealed (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 11\(3\)\(b\)](#), [Sch. 43 Pt. 3\(3\)](#)
- F62** Sch. 3 para. 34(5A) inserted (10.7.2003) by [Finance Act 2003 \(c. 14\)](#), [Sch. 21 para. 11\(4\)](#)
- F63** Words in Sch. 3 para. 34(5A)(b) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 23\(3\)](#) (with [Sch. 2 para. 23\(4\)](#))

#### *Time when scheme-related employment ends*

- 35 (1) This paragraph applies for the purposes of paragraph 34 (exercise of options: scheme-related employment ends).
- (2) Unless sub-paragraph (3) applies, a participant (“P”) is to be regarded as ceasing to hold scheme-related employment on the date when the office or employment in question terminates.
- (3) If—
- P’s scheme-related employment terminates, but
  - P continues to hold an office or employment in the scheme organiser or any associated company,
- P is to be regarded as ceasing to hold the scheme-related employment on the date when P no longer holds any office or employment within paragraph (b), and not at any earlier time.
- (4) For the purposes of sub-paragraph (3) one company is an “associated company” of another company if—
- one has control of the other, or
  - both are under the control of the same person or persons;
- and for this purpose the question of whether a person controls a company is to be determined in accordance with [<sup>F64</sup>sections 450 and 451 of CTA 2010] (“control” in the context of close companies).
- (5) Nothing in paragraph 34 or this paragraph applies where a person’s scheme-related employment terminates on that person’s death (see instead paragraph 32).
- (6) In this paragraph “scheme-related employment” has the same meaning as in paragraph 34.

#### **Textual Amendments**

- F64** Words in Sch. 3 para. 35(4) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 397\(4\)](#) (with [Sch. 2](#))

#### *Exercise of options: employment in associated company at bonus date*

- 36 The scheme may provide that if at the bonus date a participant holds an office or employment in a company which is—
- an associated company of the scheme organiser, but



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- (b) not a constituent company,  
the options may be exercised within 6 months after that date.

*Exercise of options: company events*

- 37 (1) The scheme may provide that share options relating to shares in a company may be exercised within 6 months after the relevant date for the purposes of sub-paragraph (2), (4) [<sup>F65</sup>, (4ZA)] [<sup>F66</sup>, (4A)] or (5).
- (2) The relevant date for the purposes of this sub-paragraph is the date when—
- (a) a person has obtained control of the company as a result of making an offer falling within sub-paragraph (3), and
  - (b) any condition subject to which the offer is made has been satisfied.
- (3) An offer falls within this sub-paragraph if it is—
- (a) a general offer to acquire the whole of the issued ordinary share capital of the company, which is made on a condition such that, if it is met, the person making the offer will have control of the company, or
  - (b) a general offer to acquire all the shares in the company which are of the same class as the shares in question obtained under the scheme.
- [<sup>F67</sup>(3A) In sub-paragraph (3)(a) the reference to the issued ordinary share capital of the company does not include any capital already held by the person making the offer or a person connected with that person and in sub-paragraph (3)(b) the reference to the shares in the company does not include any shares already held by the person making the offer or a person connected with that person.
- (3B) For the purposes of sub-paragraph (3)(a) and (b) it does not matter if the general offer is made to different shareholders by different means.]
- (4) The relevant date for the purposes of this sub-paragraph is the date when the court sanctions under [<sup>F68</sup>section 899 of the Companies Act 2006 (court sanction for compromise or arrangement)] a compromise or arrangement [<sup>F69</sup>applicable to or affecting—
- (a) all the ordinary share capital of the company or all the shares of the same class as the shares to which the option relates, or
  - (b) all the shares, or all the shares of that same class, which are held by a class of shareholders identified otherwise than by reference to their employment or directorships or their participation in [<sup>F70</sup>a Schedule 3] SAYE option scheme.]

[<sup>F71</sup>(4ZA) The relevant date for the purposes of this sub-paragraph is the date when the court sanctions under section 901F of the Companies Act 2006 (court sanction for compromise or arrangement) a compromise or arrangement applicable to or affecting—

    - (a) all the ordinary share capital of the company or all the shares of the same class as the shares to which the option relates, or
    - (b) all the shares, or all the shares of that same class, which are held by a class of shareholders identified otherwise than by reference to their employment or directorships or their participation in a Schedule 3 SAYE option scheme.]

[<sup>F72</sup>(4A) The relevant date for the purposes of this sub-paragraph is the date on which a non-UK company reorganisation arrangement applicable to or affecting—

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- (a) all the ordinary share capital of the company or all the shares of the same class as the shares to which the option relates, or
  - (b) all the shares, or all the shares of that same class, which are held by a class of shareholders identified otherwise than by reference to their employments or directorships or their participation in a Schedule 3 SAYE option scheme, becomes binding on the shareholders covered by it.]
- (5) The relevant date for the purposes of this sub-paragraph is the date when the company passes a resolution for voluntary winding up.
- (6) The scheme may provide that share options relating to shares in a company may be exercised at any time when any person is bound or entitled to acquire shares in the company under [<sup>F73</sup>sections 979 to 982 [<sup>F74</sup>or 983 to 985] of the Companies Act 2006 (takeover offers: right of offeror to buy out minority shareholder [<sup>F75</sup>etc])].
- [<sup>F76</sup>(6A) Sub-paragraphs (6B) to (6F) apply if the scheme makes provision under sub-paragraph (1) or (6).
- (6B) The scheme may provide that if, in consequence of a relevant event, shares in the company to which a share option relates no longer meet the requirements of Part 4 of this Schedule, the share option may be exercised under the provision made under sub-paragraph (1) or (6) (as the case may be) no later than 20 days after the day on which the relevant event occurs, notwithstanding that the shares no longer meet the requirements of Part 4 of this Schedule.
- (6C) In sub-paragraph (6B) “relevant event” means—
  - (a) a person obtaining control of the company as mentioned in sub-paragraph (2) (a);
  - (b) a person obtaining control of the company as a result of a compromise or arrangement sanctioned by the court as mentioned in sub-paragraph (4) [<sup>F77</sup>or (4ZA)];
  - (c) a person obtaining control of the company as a result of a non-UK company reorganisation arrangement which has become binding on the shareholders covered by it as mentioned in sub-paragraph (4A);
  - (d) a person who is bound or entitled to acquire shares in the company as mentioned in sub-paragraph (6) obtaining control of the company.
- (6D) Provision made under sub-paragraph (6B) may not authorise the exercise of a share option, as the case may be—
  - (a) at a time outside the 6 month period mentioned in sub-paragraph (1), or
  - (b) at a time not covered by sub-paragraph (6).
- (6E) The scheme may provide that a share option relating to shares in a company which is exercised during the period of 20 days ending with—
  - (a) the relevant date for the purposes of sub-paragraph (2), (4) [<sup>F78</sup>, (4ZA)] or (4A), or
  - (b) the date on which any person becomes bound or entitled to acquire shares in the company as mentioned in sub-paragraph (6),
 is to be treated as if it had been exercised in accordance with the provision made under sub-paragraph (1) or (6) (as the case may be).
- (6F) If the scheme makes provision under sub-paragraph (6E) it must also provide that if—

*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

- (a) a share option is exercised in reliance on that provision in anticipation of—
    - (i) an event mentioned in sub-paragraph (2), (4) [<sup>F79</sup>, (4ZA)] or (4A) occurring, or
    - (ii) a person becoming bound or entitled to acquire shares in the company as mentioned in sub-paragraph (6), but
  - (b) as the case may be—
    - (i) the relevant date for the purposes of sub-paragraph (2), (4) [<sup>F80</sup>, (4ZA)] or (4A) does not fall during the period of 20 days beginning with the date on which the share option is exercised, or
    - (ii) the person does not become bound or entitled to acquire shares in the company by the end of the period of 20 days beginning with the date on which the share option is exercised,
- the exercise of the share option is to be treated as having had no effect.]
- (7) For the purposes of this paragraph—
- (a) “share options” means share options granted under the scheme; and
  - (b) a person is to be treated as obtaining control of a company if that person and others acting in concert together obtain control of it.
- (8) This paragraph has effect subject to paragraph 30(1)(b) (options must not be capable of being exercised later than 6 months after bonus date).

#### Textual Amendments

- F65** Word in Sch. 3 para. 37(1) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 9 para. 24\(2\)\(a\)](#) (with ss. 2(2), 5(2))
- F66** Words in Sch. 3 para. 37(1) inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 114\(2\)](#), 146 (with [Sch. 8 paras. 147-157](#))
- F67** Sch. 3 para. 37(3A)(3B) inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 24\(2\)](#) (with [Sch. 2 para. 24\(3\)](#))
- F68** Words in Sch. 3 para. 37(4) substituted for Sch. 3 para. 37(4)(a)(b) (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008 \(S.I. 2008/954\)](#), arts. 1(1), [32\(2\)](#) (with art. 4)
- F69** Words in Sch. 3 para. 37(4) substituted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 24\(4\)](#) (with [Sch. 2 para. 24\(5\)](#))
- F70** Words in Sch. 3 para. 37(4)(b) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 114\(3\)](#), 146 (with [Sch. 8 paras. 147-157](#))
- F71** Sch. 3 para. 37(4ZA) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 9 para. 24\(2\)\(b\)](#) (with ss. 2(2), 5(2))
- F72** Sch. 3 para. 37(4A) inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 114\(4\)](#), 146 (with [Sch. 8 paras. 147-157](#))
- F73** Words in Sch. 3 para. 37(6) substituted for Sch. 3 para. 37(6)(a)(b) (6.4.2007) by [The Companies Act 2006 \(Commencement No. 2, Consequential Amendments, Transitional Provisions and Savings\) Order 2007 \(S.I. 2007/1093\)](#), [Sch. 3 para. 3](#) (with art. 11(1))
- F74** Words in Sch. 3 para. 37(6) inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 24\(6\)\(a\)](#) (with [Sch. 2 para. 24\(7\)](#))
- F75** Word in Sch. 3 para. 37(6) inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 24\(6\)\(b\)](#) (with [Sch. 2 para. 24\(7\)](#))
- F76** Sch. 3 para. 37(6A)-(6F) inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 114\(5\)](#), 146 (with [Sch. 8 paras. 147-157](#))

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*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

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- F77** Words in Sch. 3 para. 37(6C)(b) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020](#) (c. 12), s. 49(1), **Sch. 9 para. 24(2)(c)** (with ss. 2(2), 5(2))
- F78** Word in Sch. 3 para. 37(6E)(a) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020](#) (c. 12), s. 49(1), **Sch. 9 para. 24(2)(d)** (with ss. 2(2), 5(2))
- F79** Word in Sch. 3 para. 37(6F)(a)(i) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020](#) (c. 12), s. 49(1), **Sch. 9 para. 24(2)(e)** (with ss. 2(2), 5(2))
- F80** Word in Sch. 3 para. 37(6F)(b)(i) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020](#) (c. 12), s. 49(1), **Sch. 9 para. 24(2)(e)** (with ss. 2(2), 5(2))

## PART 7

### EXCHANGE OF SHARE OPTIONS

#### *Exchange of options on company reorganisation*

- 38 (1) An SAYE option scheme may provide that if—
- (a) there is a company reorganisation affecting a scheme company (that is, a company whose shares may be acquired by the exercise of share options obtained under the scheme: see paragraph 18), and
  - (b) a participant has obtained share options under the scheme which are to acquire shares of the scheme company (“the old options”),
- the participant may agree with the acquiring company to release the old options in consideration of the participant being granted new share options.
- (2) For the purposes of this paragraph there is a company reorganisation affecting a scheme company if another company (“the acquiring company”)—
- (a) obtains control of the scheme company—
    - (i) as a result of making a general offer to acquire the whole of the issued ordinary share capital of the scheme company which is made on a condition such that, if it is met, the person making the offer will have control of that company, or
    - (ii) as a result of making a general offer to acquire all the shares in the scheme company which are of the same class as those subject to the old options;
  - <sup>[F81]</sup>(b) obtains control of the scheme company as a result of a compromise or arrangement sanctioned by the court under section 899 <sup>[F82]</sup>or 901F of the Companies Act 2006 (court sanction for compromise or arrangement); <sup>F83</sup>...
  - <sup>[F84]</sup>(ba) obtains control of the scheme company as a result of a non-UK company reorganisation arrangement which has become binding on the shareholders covered by it; or]
  - (c) becomes bound or entitled to acquire shares in the scheme company under sections 979 to 982 <sup>[F85]</sup>or 983 to 985 of that Act (takeover offers: right of offeror to buy out minority shareholder <sup>[F86]</sup>etc) .]
- <sup>[F87]</sup>(2A) In sub-paragraph (2)(a)(i) the reference to the issued ordinary share capital of the scheme company does not include any capital already held by the person making the offer or a person connected with that person and in sub-paragraph (2)(a)(ii) the reference to the shares in the scheme company does not include any shares already held by the person making the offer or a person connected with that person.

*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

- (2B) For the purposes of sub-paragraph (2)(a)(i) and (ii) it does not matter if the general offer is made to different shareholders by different means.]
- (3) A scheme that makes provision under sub-paragraph (1) must require the agreement referred to in that sub-paragraph to be made—
- (a) where control is obtained in the way set out in sub-paragraph (2)(a)(i) or (ii), within the period of 6 months beginning with the time when the acquiring company obtains control and any condition subject to which the offer is made is met,
  - (b) where control is obtained in the way set out in sub-paragraph (2)(b), within the period of 6 months beginning with the time when the court sanctions the compromise or arrangement, <sup>F88</sup>...
  - [<sup>F89</sup>(ba) where control is obtained in the way set out in sub-paragraph (2)(ba), within the period of 6 months beginning with the date on which the non-UK company reorganisation arrangement becomes binding on the shareholders covered by it, and]
  - (c) where sub-paragraph (2)(c) applies, within the period during which the acquiring company remains bound or entitled as mentioned in that provision.

#### Textual Amendments

- F81** Sch. 3 para. 38(2)(b)(c) substituted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2008](#) (S.I. 2008/954), arts. 1(1), **32(3)** (with art. 4)
- F82** Words in Sch. 3 para. 38(2)(b) inserted (26.6.2020) by [Corporate Insolvency and Governance Act 2020](#) (c. 12), s. 49(1), **Sch. 9 para. 24(3)** (with ss. 2(2), 5(2))
- F83** Word in Sch. 3 para. 38(2) omitted (6.4.2014) by virtue of [Finance Act 2014](#) (c. 26), **Sch. 8 paras. 115(2), 146** (with [Sch. 8 paras. 147-157](#))
- F84** Sch. 3 para. 38(2)(ba) inserted (6.4.2014) by [Finance Act 2014](#) (c. 26), **Sch. 8 paras. 115(2), 146** (with [Sch. 8 paras. 147-157](#))
- F85** Words in Sch. 3 para. 38(2)(c) inserted (17.7.2013) by [Finance Act 2013](#) (c. 29), **Sch. 2 para. 25(2)(a)** (with [Sch. 2 para. 25\(4\)](#))
- F86** Word in Sch. 3 para. 38(2)(c) inserted (17.7.2013) by [Finance Act 2013](#) (c. 29), **Sch. 2 para. 25(2)(b)** (with [Sch. 2 para. 25\(4\)](#))
- F87** Sch. 3 para. 38(2A)(2B) inserted (17.7.2013) by [Finance Act 2013](#) (c. 29), **Sch. 2 para. 25(3)** (with [Sch. 2 para. 25\(4\)](#))
- F88** Word in Sch. 3 para. 38(3) omitted (6.4.2014) by virtue of [Finance Act 2014](#) (c. 26), **Sch. 8 paras. 115(3), 146** (with [Sch. 8 paras. 147-157](#))
- F89** Sch. 3 para. 38(3)(ba) inserted (6.4.2014) by [Finance Act 2014](#) (c. 26), **Sch. 8 paras. 115(3), 146** (with [Sch. 8 paras. 147-157](#))

#### *Requirements about share options granted in exchange*

- 39 (1) This paragraph applies to a scheme that makes provision under paragraph 38 (exchange of options on company reorganisation).
- (2) The scheme must require the new share options to relate to shares in a company which—
- (a) is different from the company whose shares are subject to the old options, and

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*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

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- (b) is either the acquiring company itself or some other company within sub-paragraph (b) or (c) of paragraph 18 (shares must be ordinary shares of certain companies), namely—
  - (i) a company which has control of the scheme organiser, or
  - (ii) a company which is, or has control of a company which is, a member of a consortium owning either the scheme organiser or a company having control of the scheme organiser.

For this purpose the control in question may be through the medium of the acquiring company.

- (3) The scheme must also require the new share options to be equivalent to the old options.
- (4) For the new options to be regarded as equivalent to the old options—
  - (a) the shares to which they relate must meet the conditions in paragraphs 18 to 22 (types of share that may be used),
  - (b) they must be exercisable in the same manner as the old options and subject to the provisions of the scheme as it had effect immediately before the release of the old options,
  - (c) the total market value of the shares subject to the old options immediately before the release of those options by the participant must [<sup>F90</sup>be substantially the same as] the total market value, immediately after the grant of the new options to the participant, of the shares subject to those options, and
  - (d) the total amount payable by the participant for the acquisition of shares under the new options must be [<sup>F91</sup>substantially the same as] the total amount that would have been so payable under the old options.
- (5) For the purposes of the SAYE code, new share options granted under the terms of a provision included in a scheme under paragraph 38 are to be treated as having been granted at the time when the corresponding old options were granted.
- (6) This also applies for the purposes of the provisions of the scheme in their operation, after the grant of the new options, by virtue of a condition complying with sub-paragraph (4)(b).
- [<sup>F92</sup>(7) For the purposes of this paragraph the market value of shares subject to a restriction is to be determined as if they were not subject to the restriction.]
- [<sup>F93</sup>(8) For the purposes of this paragraph the market value of any shares is to be determined using a methodology agreed by Her Majesty's Revenue and Customs.]

#### Textual Amendments

- F90** Words in [Sch. 3 para. 39\(4\)\(c\)](#) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 116\(2\)\(a\)](#), 146 (with [Sch. 8 paras. 147-157](#))
- F91** Words in [Sch. 3 para. 39\(4\)\(d\)](#) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 116\(2\)\(b\)](#), 146 (with [Sch. 8 paras. 147-157](#))
- F92** [Sch. 3 para. 39\(7\)](#) inserted (with effect in accordance with [Sch. 2 para. 67](#) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 63](#)
- F93** [Sch. 3 para. 39\(8\)](#) inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 116\(3\)](#), 146 (with [Sch. 8 paras. 147-157](#))

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## [<sup>F94</sup>PART 8

### NOTIFICATION OF SCHEMES, ANNUAL RETURNS AND ENQUIRIES

#### Textual Amendments

**F94** Sch. 3 Pt. 8 substituted (6.4.2014) by Finance Act 2014 (c. 26), Sch. 8 paras. 117, 146 (with Sch. 8 paras. 147-157)

#### *Notice of scheme to be given to HMRC*

40A (1) For an SAYE option scheme to be a Schedule 3 SAYE option scheme, notice of the scheme must be given to Her Majesty's Revenue and Customs ("HMRC").

(2) The notice must—

- (a) be given by the scheme organiser,
- (b) contain, or be accompanied by, such information as HMRC may require, and
- (c) contain a declaration within sub-paragraph (3) made by such persons as HMRC may require.

(3) A declaration within this sub-paragraph is a declaration—

- (a) that the requirements of Parts 2 to 7 of this Schedule are met in relation to the scheme, and
- (b) if the declaration is made after the first date on which share options are granted under the scheme ("the first grant date"), that those requirements—
  - (i) were met in relation to those grants of share options, and
  - (ii) have otherwise been met in relation to the scheme at all times on or after the first grant date when share options granted under the scheme are outstanding.

(4) If notice is given under this paragraph in relation to an SAYE option scheme, for the purposes of the SAYE code the scheme is to be a Schedule 3 SAYE option scheme at all times on and after the relevant date (but not before that date).

(5) But if the notice is given after the initial notification deadline, the scheme is to be a Schedule 3 SAYE option scheme only from the beginning of the relevant tax year.

[<sup>F95</sup>(5A) Sub-paragraph (5) does not apply if the scheme organiser satisfies HMRC (or, on an appeal under paragraph 40K, the tribunal) that there is a reasonable excuse for the failure to give notice on or before the initial notification deadline.

(5B) Paragraph 40C(9) (what constitutes a reasonable excuse) applies for the purposes of sub-paragraph (5A).

(5C) Where HMRC are required under sub-paragraph (5A) to consider whether there was a reasonable excuse, HMRC must notify the scheme organiser of their decision within the period of 45 days beginning with the day on which HMRC received the scheme organiser's request to consider the excuse.

(5D) Where HMRC are required to notify the scheme organiser as specified in sub-paragraph (5C) but do not do so—

- (a) HMRC are to be treated as having decided that there was no reasonable excuse, and



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- (b) HMRC must notify the scheme organiser of the decision which they are treated as having made.]
- (6) For the purposes of this Part—
  - “the initial notification deadline” is 6 July in the tax year following that in which the first grant date falls,
  - “outstanding”, in relation to a share option, means that the option—
    - (a) has not been exercised, but
    - (b) is capable of being exercised in accordance with the scheme (whether on the meeting of any condition or otherwise),
  - “the relevant date” is—
    - (a) the date on which the declaration within sub-paragraph (3) is made, or
    - (b) if that declaration is made after the first grant date, the first grant date, and
  - “the relevant tax year” is—
    - (a) the tax year in which the notice under this paragraph is given, or
    - (b) if that notice is given on or before 6 July in that tax year, the preceding tax year.
- (7) Sub-paragraph (4) is subject to the following paragraphs of this Part.

#### Textual Amendments

**F95** Sch. 3 para. 40A(5A)-(5D) inserted (with effect in accordance with Sch. 3 para. 4(4) of the amending Act) by Finance Act 2016 (c. 24), Sch. 3 para. 4(2)

#### Annual returns

- 40B (1) This paragraph applies if notice is given in relation to an SAYE option scheme under paragraph 40A.
- (2) The scheme organiser must give to HMRC a return for the tax year in which the relevant date falls and for each subsequent tax year (subject to sub-paragraph (9)).
  - (3) If paragraph 40A(5) applies in relation to the scheme, in sub-paragraph (2) the reference to the tax year in which the relevant date falls is to be read as a reference to the relevant tax year.
  - (4) A return for a tax year must—
    - (a) contain, or be accompanied by, such information as HMRC may require, and
    - (b) be given on or before 6 July in the following tax year.
  - (5) The information which may be required under sub-paragraph (4)(a) includes (in particular) information to enable HMRC to determine the liability to tax, including capital gains tax, of—
    - (a) any person who has participated in the scheme, or
    - (b) any other person whose liability to tax the operation of the scheme is relevant to.
  - (6) If during a tax year—
    - (a) an alteration is made in a key feature of the scheme, or



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- (b) variations are made under a provision made under paragraph 28(3) to take account of a variation in any share capital,

the return for the tax year must contain a declaration within sub-paragraph (7) made by such persons as HMRC may require.
  - (7) A declaration within this sub-paragraph is a declaration, as the case may be—
    - (a) that the alteration has, or
    - (b) that the variations have,

not caused the requirements of Parts 2 to 7 of this Schedule not to be met in relation to the scheme.
  - (8) For the purposes of sub-paragraph (6)(a) a “key feature” of a scheme is a provision of the scheme which is necessary in order for the requirements of Parts 2 to 7 of this Schedule to be met in relation to the scheme.
  - (9) A return is not required for any tax year following that in which the termination condition is met in relation to the scheme.
  - (10) For the purposes of this Part “the termination condition” is met in relation to a scheme when—
    - (a) all share options granted under the scheme—
      - (i) have been exercised, or
      - (ii) are no longer capable of being exercised in accordance with the scheme (because, for example, they have lapsed or been cancelled), and
    - (b) no more share options will be granted under the scheme.
  - (11) If the scheme organiser becomes aware that—
    - (a) anything which should have been included in, or should have accompanied, a return for a tax year was not included in, or did not accompany, the return,
    - (b) anything which should not have been included in, or should not have accompanied, a return for a tax year was included in, or accompanied, the return, or
    - (c) any other error or inaccuracy has occurred in relation to a return for a tax year,

the scheme organiser must give an amended return correcting the position to HMRC without delay.
- 40C (1) This paragraph applies if the scheme organiser fails to give a return for a tax year (containing, or accompanied by, all required information and declarations) on or before the date mentioned in paragraph 40B(4)(b) (“the date for delivery”).
- (2) The scheme organiser is liable for a penalty of £100.
  - (3) If the scheme organiser's failure continues after the end of the period of 3 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.
  - (4) If the scheme organiser's failure continues after the end of the period of 6 months beginning with the date for delivery, the scheme organiser is liable for a further penalty of £300.
  - (5) The scheme organiser is liable for a further penalty under this sub-paragraph if—

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- (a) the scheme organiser's failure continues after the end of the period of 9 months beginning with the date for delivery,
- (b) HMRC decide that such a penalty should be payable, and
- (c) HMRC give notice to the scheme organiser specifying the period in respect of which the penalty is payable.

(The scheme organiser may be liable for more than one penalty under this sub-paragraph.)

- (6) The penalty under sub-paragraph (5) is £10 for each day that the failure continues during the period specified in the notice under sub-paragraph (5)(c).
- (7) The period specified in the notice under sub-paragraph (5)(c)—
  - (a) may begin earlier than the date on which the notice is given, but
  - (b) may not begin until after the end of the period mentioned in sub-paragraph (5)(a) or, if relevant, the end of any period specified in any previous notice under sub-paragraph (5)(c) given in relation to the failure.
- (8) Liability for a penalty under this paragraph does not arise if the scheme organiser satisfies HMRC (or, on an appeal under paragraph 40K, the tribunal) that there is a reasonable excuse for its failure.
- (9) For the purposes of sub-paragraph (8)—
  - (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside the scheme organiser's control,
  - (b) where the scheme organiser relies on any other person to do anything, that is not a reasonable excuse unless the scheme organiser took reasonable care to avoid the failure, and
  - (c) where the scheme organiser had a reasonable excuse for the failure but the excuse ceased, the scheme organiser is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

*Notices and returns to be given electronically etc*

- 40D (1) A notice under paragraph 40A, and any information accompanying the notice, must be given electronically.
- (2) A return under paragraph 40B, and any information accompanying the return, must be given electronically.
- (3) But, if HMRC consider it appropriate to do so, HMRC may allow the scheme organiser to give a notice or return or any accompanying information in another way; and, if HMRC do so, the notice, return or information must be given in that other way.
- (4) The Commissioners for Her Majesty's Revenue and Customs—
- (a) must prescribe how notices, returns and accompanying information are to be given electronically;
  - (b) may make different provision for different cases or circumstances.
- 40E (1) This paragraph applies if a return under paragraph 40B, or any information accompanying such a return—
- (a) is given otherwise than in accordance with paragraph 40D, or
  - (b) contains a material inaccuracy—

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- (i) which is careless or deliberate, or
  - (ii) which is not corrected as required by paragraph 40B(11).
- (2) The scheme organiser is liable for a penalty of an amount decided by HMRC.
- (3) The penalty must not exceed £5,000.
- (4) For the purposes of sub-paragraph (1)(b)(i) an inaccuracy is careless if it is due to a failure by the scheme organiser to take reasonable care.

### *Enquiries*

- 40F (1) This paragraph applies if notice is given in relation to an SAYE option scheme under paragraph 40A.
- (2) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than—
    - (a) 6 July in the tax year following the tax year in which the initial notification deadline falls, or
    - (b) if the notice under paragraph 40A is given after the initial notification deadline, 6 July in the second tax year following the relevant tax year.
  - (3) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so no later than 12 months after the date on which a declaration within paragraph 40B(7) is given to HMRC.
  - (4) Sub-paragraph (5) applies if (at any time) HMRC have reasonable grounds for believing that requirements of Parts 2 to 7 of this Schedule—
    - (a) are not met in relation to the scheme, or
    - (b) have not been met in relation to the scheme.
  - (5) HMRC may enquire into the scheme if HMRC give notice to the scheme organiser of HMRC's intention to do so.
  - (6) Notice may be given, and an enquiry may be conducted, under sub-paragraph (2), (3) or (5) even though the termination condition is met in relation to the scheme.
- 40G (1) An enquiry under paragraph 40F(2), (3) or (5) is completed when HMRC give the scheme organiser a notice (a “closure notice”) stating—
  - (a) that HMRC have completed the enquiry, and
  - (b) that—
    - (i) paragraph 40H is to apply,
    - (ii) paragraph 40I is to apply, or
    - (iii) neither paragraph 40H nor paragraph 40I is to apply.
- (2) If the scheme organiser receives notice under paragraph 40F(2), (3) or (5), the scheme organiser may make an application to the tribunal for a direction requiring a closure notice for the enquiry to be given within a specified period.
  - (3) The application is to be subject to the relevant provisions of Part 5 of TMA 1970 (see, in particular, section 48(2)(b) of that Act).
  - (4) The tribunal must give a direction unless satisfied that HMRC have reasonable grounds for not giving the closure notice within the specified period.
- 40H (1) This paragraph applies if HMRC decide—

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- (a) that requirements of Parts 2 to 7 of this Schedule—
      - (i) are not met in relation to the scheme, or
      - (ii) have not been met in relation to the scheme, and
    - (b) that the situation is, or was, so serious that this paragraph should apply.
  - (2) If this paragraph applies—
    - (a) the scheme is not to be a Schedule 3 SAYE option scheme with effect from—
      - (i) such relevant time as is specified in the closure notice, or
      - (ii) if no relevant time is specified, the time of the giving of the closure notice, and
    - (b) the scheme organiser is liable for a penalty of an amount decided by HMRC.
  - (3) Sub-paragraph (4) applies in relation to a share option granted under the scheme if the option—
    - (a) is granted at a time before that mentioned in sub-paragraph (2)(a)(i) or (ii) (as the case may be) when the scheme is a Schedule 3 SAYE option scheme, but
    - (b) is exercised at or after the time mentioned in sub-paragraph (2)(a)(i) or (ii) (as the case may be).
  - (4) For the purposes of section 519 (exemption in respect of exercise of share option) in its application to the option, the scheme is to be taken still to be a Schedule 3 SAYE option scheme at the time of the exercise of the option.
  - (5) The penalty under sub-paragraph (2)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—
    - (a) the total income tax for which persons who have been granted share options under the scheme have not been liable, or will not be liable in the future, and
    - (b) the total contributions under Part 1 of SSCBA 1992 or SSCB(NI)A 1992 for which any persons have not been liable, or will not be liable in the future,
 in consequence of the scheme having been a Schedule 3 SAYE option scheme at any relevant time before the time mentioned in sub-paragraph (2)(a)(i) or (ii) (as the case may be).
  - (6) The liabilities covered by sub-paragraph (5) include liabilities for income tax or contributions which a person has not had, or will not have, in consequence of sub-paragraph (4).
  - (7) In this paragraph “relevant time” means any time before the giving of the closure notice when requirements of Parts 2 to 7 of this Schedule were not met in relation to the scheme.
- 40I (1) This paragraph applies if HMRC decide—
- (a) that requirements of Parts 2 to 7 of this Schedule—
    - (i) are not met in relation to the scheme, or
    - (ii) have not been met in relation to the scheme, but
  - (b) that the situation is not, or was not, so serious that paragraph 40H should apply.
- (2) If this paragraph applies, the scheme organiser—
- (a) is liable for a penalty of an amount decided by HMRC, and
  - (b) must, no later than 90 days after the relevant day, secure that the requirements of Parts 2 to 7 of this Schedule are met in relation to the scheme.

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- (3) The penalty under sub-paragraph (2)(a) must not exceed £5,000.
- (4) In sub-paragraph (2)(b) “the relevant day” means—
  - (a) the last day of the period in which notice of an appeal under paragraph 40K(2)(b) may be given, or
  - (b) if notice of such an appeal is given, the day on which the appeal is determined or withdrawn.
- (5) Sub-paragraph (2)(b) does not apply if the termination condition was met in relation to the scheme before the closure notice was given or is met before the end of the 90 day period mentioned in sub-paragraph (2)(b).
- (6) If the scheme organiser fails to comply with sub-paragraph (2)(b), HMRC may give the scheme organiser a notice stating that that is the case (a “default notice”).
- (7) If the scheme organiser is given a default notice—
  - (a) the scheme is not to be a Schedule 3 SAYE option scheme with effect from—
    - (i) such relevant time as is specified in the default notice, or
    - (ii) if no relevant time is specified, the time of the giving of the default notice, and
  - (b) the scheme organiser is liable for a further penalty of an amount decided by HMRC.
- (8) Sub-paragraph (9) applies in relation to a share option granted under the scheme if the option—
  - (a) is granted at a time before that mentioned in sub-paragraph (7)(a)(i) or (ii) (as the case may be) when the scheme is a Schedule 3 SAYE option scheme, but
  - (b) is exercised at or after the time mentioned in sub-paragraph (7)(a)(i) or (ii) (as the case may be).
- (9) For the purposes of section 519 (exemption in respect of exercise of share option) in its application to the option, the scheme is to be taken still to be a Schedule 3 SAYE option scheme at the time of the exercise of the option.
- (10) The penalty under sub-paragraph (7)(b) must not exceed an amount equal to twice HMRC's reasonable estimate of—
  - (a) the total income tax for which persons who have been granted share options under the scheme have not been liable, or will not be liable in the future, and
  - (b) the total contributions under Part 1 of SSCBA 1992 or SSCB(NI)A 1992 for which any persons have not been liable, or will not be liable in the future,in consequence of the scheme having been a Schedule 3 SAYE option scheme at any relevant time before the time mentioned in sub-paragraph (7)(a)(i) or (ii) (as the case may be).
- (11) The liabilities covered by sub-paragraph (10) include liabilities for income tax or contributions which a person has not had, or will not have, in consequence of sub-paragraph (9).
- (12) In this paragraph “relevant time” means any time before the giving of the default notice when requirements of Parts 2 to 7 of this Schedule were not met in relation to the scheme.

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### *Assessment of penalties*

- 40J (1) This paragraph applies if the scheme organiser is liable for a penalty under this Part.
- (2) HMRC must assess the penalty and notify the scheme organiser of the assessment.
- (3) Subject to sub-paragraphs (4) and (5), the assessment must be made no later than 12 months after the date on which the scheme organiser becomes liable for the penalty.
- (4) In the case of a penalty under paragraph 40E(1)(b), the assessment must be made no later than—
- 12 months after the date on which HMRC become aware of the inaccuracy, and
  - 6 years after the date on which the scheme organiser becomes liable for the penalty.
- (5) In the case of a penalty under paragraph 40H(2)(b) or 40I(2)(a) or (7)(b) where notice of appeal is given under paragraph 40K(2) or (3), the assessment must be made no later than 12 months after the date on which the appeal is determined or withdrawn.
- (6) A penalty payable under this Part must be paid—
- no later than 30 days after the date on which the notice under sub-paragraph (2) is given to the scheme organiser, or
  - if notice of appeal is given against the penalty under paragraph 40K(1) or (4), no later than 30 days after the date on which the appeal is determined or withdrawn.
- (7) The penalty may be enforced as if it were corporation tax or, if the scheme organiser is not within the charge to corporation tax, income tax charged in an assessment and due and payable.
- (8) Sections 100 to 103 of TMA 1970 do not apply to a penalty under this Part.

### *Appeals*

- ~~40K~~<sup>40K6</sup>(A1) The scheme organiser may appeal against a decision of HMRC under paragraph 40A(5A) that there was no reasonable excuse for the failure to give notice on or before the initial notification deadline.]
- (1) The scheme organiser may appeal against a decision of HMRC that the scheme organiser is liable for a penalty under paragraph 40C or 40E.
- (2) The scheme organiser may appeal against—
- a decision of HMRC mentioned in paragraph 40H(1) or a decision of HMRC to specify, or not to specify, a relevant time in the closure notice;
  - a decision of HMRC mentioned in paragraph 40I(1).
- (3) The scheme organiser may appeal against a decision of HMRC—
- to give the scheme organiser a default notice under paragraph 40I;
  - to specify, or not to specify, a relevant time in the default notice.
- (4) The scheme organiser may appeal against a decision of HMRC as to the amount of a penalty payable by the scheme organiser under this Part.
- (5) Notice of appeal must be given to HMRC no later than 30 days after the date on which—

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- [<sup>F97</sup>(za) in the case of an appeal under sub-paragraph (A1), notice of HMRC's decision is given to the scheme organiser;]
- (a) in the case of an appeal under sub-paragraph (1) or (4), the notice under paragraph 40J(2) is given to the scheme organiser;
  - (b) in the case of an appeal under sub-paragraph (2), the closure notice is given;
  - (c) in the case of an appeal under sub-paragraph (3), the default notice is given.
- (6) On an appeal under sub-paragraph [<sup>F98</sup>(A1),] (1) or (3)(a) which is notified to the tribunal, the tribunal may affirm or cancel the decision.
- (7) On an appeal under sub-paragraph (2) or (3)(b) which is notified to the tribunal, the tribunal may—
- (a) affirm or cancel the decision, or
  - (b) substitute for the decision another decision which HMRC had power to make.
- (8) On an appeal under sub-paragraph (4) which is notified to the tribunal, the tribunal may—
- (a) affirm the amount of the penalty decided, or
  - (b) substitute another amount for that amount.
- (9) Subject to this paragraph and paragraph 40J, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to an appeal under this paragraph as they have effect in relation to an appeal against an assessment to corporation tax or, if the scheme organiser is not within the charge to corporation tax, income tax.]

#### Textual Amendments

- F96** Sch. 3 para. 40K(A1) inserted (with effect in accordance with Sch. 3 para. 4(4) of the amending Act) by Finance Act 2016 (c. 24), **Sch. 3 para. 4(3)(a)**
- F97** Sch. 3 para. 40K(5)(za) inserted (with effect in accordance with Sch. 3 para. 4(4) of the amending Act) by Finance Act 2016 (c. 24), **Sch. 3 para. 4(3)(b)**
- F98** Word in Sch. 3 para. 40K(6) inserted (with effect in accordance with Sch. 3 para. 4(4) of the amending Act) by Finance Act 2016 (c. 24), **Sch. 3 para. 4(3)(c)**

## PART 9

### SUPPLEMENTARY PROVISIONS

#### *Power to require information*

- 45 [<sup>F99</sup>(1) An officer of Revenue and Customs may by notice require a person to provide the officer with any information—
- (a) which the officer reasonably requires for the performance of any functions of Her Majesty's Revenue and Customs or an officer of Revenue and Customs under the SAYE code, and
  - (b) which the person to whom the notice is addressed has or can reasonably obtain.
- (2) The power conferred by this paragraph extends, in particular, to—
- (a) information to enable [<sup>F27</sup>an officer of Revenue and Customs] —

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- (b) [F100(i) to check anything contained in a notice under paragraph 40A or a return under paragraph 40B or to check any information accompanying such a notice or return, or”, and]  
(ii) to determine the liability to tax, including capital gains tax, of any person who has participated in a scheme [F101or any other person whose liability to tax the operation of a scheme is relevant to], and
- (b) information about the administration of a scheme and any alteration of the terms of a scheme.
- (3) The notice must require the information to be provided within a specified time, which must not end earlier than 3 months after the date when the notice is given.]

## Textual Amendments

- F27** Words in Act substituted (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\), s. 53\(1\), Sch. 4 para. 102\(1\)](#); S.I. 2005/1126, art. 2(2)(h)
- F99** Sch. 3 para. 45(1) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\), Sch. 8 paras. 118\(2\)](#), 146 (with [Sch. 8 paras. 147-157](#))
- F100** Sch. 3 para. 45(2)(a)(i) substituted (6.4.2014) by [Finance Act 2014 \(c. 26\), Sch. 8 paras. 118\(3\)\(a\)](#), 146 (with [Sch. 8 paras. 147-157](#))
- F101** Words in Sch. 3 para. 45(2)(a)(ii) inserted (6.4.2014) by [Finance Act 2014 \(c. 26\), Sch. 8 paras. 118\(3\)\(b\)](#), 146 (with [Sch. 8 paras. 147-157](#))

*Jointly owned companies*

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- (1) This paragraph applies for the purposes of the provisions of the SAYE code relating to group schemes.
  - (2) Each joint owner of a jointly owned company is to be treated as controlling every company within sub-paragraph (3).
  - (3) The companies within this sub-paragraph are—
    - (a) the jointly owned company, and
    - (b) any company controlled by that company.
  - (4) However, no company within sub-paragraph (3) may be—
    - (a) a constituent company in more than one group scheme, or
    - (b) a constituent company in a particular group scheme if another company within that sub-paragraph is a constituent company in a different group scheme.
  - (5) In this paragraph a “jointly owned company” means a company which (apart from sub-paragraph (2)) is not controlled by any one person and—
    - (a) of which 50% of the issued share capital is owned by one person and 50% by another, or
    - (b) which is otherwise controlled by two persons taken together.
  - (6) In this paragraph “joint owner” means one of the persons mentioned in sub-paragraph (5)(a) or (b).



*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

*Meaning of “associated company”*

- 47 (1) For the purposes of the SAYE code, except in paragraph 35(3) (time when “scheme-related employment” ends), one company is an “associated company” of another company at a given time if, at that time or at any other time within one year previously—
- (a) one has control of the other, or
  - (b) both are under the control of the same person or persons.
- (2) For the purposes of sub-paragraph (1) the question whether a person controls a company is to be determined in accordance with [<sup>F102</sup>sections 450 and 451 of CTA 2010].

**Textual Amendments**

**F102** Words in Sch. 3 para. 47(2) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 397\(5\)](#) (with [Sch. 2](#))

*[<sup>F103</sup>Non-UK company reorganisation arrangements*

**Textual Amendments**

**F103** [Sch. 3 para. 47A](#) and cross-heading inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 119, 146](#) (with [Sch. 8 paras. 147-157](#))

- 47A (1) For the purposes of the SAYE code a “non-UK company reorganisation arrangement” is an arrangement made in relation to a company under the law of a territory outside the United Kingdom—
- (a) which gives effect to a reorganisation of the company's share capital by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both of those methods, and
  - (b) which is approved by a resolution of members of the company.
- (2) A resolution does not count for the purposes of sub-paragraph (1)(b) unless the members who vote in favour of approving the arrangement represent more than 50% of the total voting rights of all the members having the right to vote on the issue.]

*Minor definitions*

- 48 (1) In the SAYE code—
- “[<sup>F104</sup>certified SAYE savings arrangement]” has the meaning given in [<sup>F105</sup>section 703(1) of ITTOIA 2005];
  - “company” means a body corporate;
  - “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.
- (2) For the purposes of the SAYE code a company is a member of a consortium owning another company if it is one of a number of companies—
- (a) which between them beneficially own not less than 75% of the other company's ordinary share capital, and
  - (b) each of which beneficially owns not less than 5% of that capital.

*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

- [<sup>F106</sup>(3) For the purposes of the SAYE code—
- (a) shares are subject to a “restriction” if there is any contract, agreement, arrangement or condition which makes provision to which any of subsections (2) to (4) of section 423 (restricted securities) would apply if the references in those subsections to the employment-related securities were to the shares, and
  - (b) the “restriction” is that provision.]

**Textual Amendments**

- F104** Words in Sch. 3 para. 48(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(11\)\(a\)](#) (with [Sch. 2](#))
- F105** Words in Sch. 3 para. 48(1) substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\), s. 883\(1\), Sch. 1 para. 618\(11\)\(b\)](#) (with [Sch. 2](#))
- F106** Sch. 3 para. 48(3) inserted (with effect in accordance with Sch. 2 para. 67 of the amending Act) by [Finance Act 2013 \(c. 29\), Sch. 2 para. 65](#)

*Index of defined expressions*

49        In the SAYE code the following expressions are defined or otherwise explained by the provisions indicated below:

F107	F107
...	...
associated company	paragraph 47(1)
the bonus date	paragraph 30(3)
[ <sup>F108</sup> certified SAYE savings arrangement]	paragraph 48(1)
child	[ <sup>F109</sup> section 721(6)]
close company	[ <sup>F110</sup> section 989 of ITA 2007] F111
	...
company	paragraph 48(1)
connected person	section 718
constituent company	paragraph 3(3)
control	section 719 (and see paragraphs 35(4) and 47(2))
distribution	[ <sup>F112</sup> section 989 of ITA 2007]
earnings	section 62 and see section 721(7)
eligible shares (in Part 4 of this Schedule)	paragraph 17(2)
employee and employment	section 4
group scheme	paragraph 3(2) (and see paragraph 46)

**Changes to legislation:** There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

F113	F113
...	...
F114	F114
...	...
market value	paragraph 48(1)
member of a consortium	paragraph 48(2)
[ <sup>F115</sup> non-UK company reorganisation arrangement	paragraph 47A ]
notice	[ <sup>F116</sup> section 989 of ITA 2007]
the options (in relation to a participant)	paragraph 2(2)
ordinary share capital	[ <sup>F117</sup> section 989 of ITA 2007]
participant	paragraph 2(2)
participate	paragraph 2(2)
personal representatives	[ <sup>F118</sup> section 989 of ITA 2007]
recognised stock exchange	[ <sup>F119</sup> section 1005 of ITA 2007]
[ <sup>F120</sup> restriction (in relation to shares)	paragraph 48(3)]
the SAYE code	section 516(3)
SAYE option scheme	section 516(4)
[ <sup>F115</sup> Schedule 3 SAYE option scheme	paragraph 1 and Part 8 of this Schedule]
the scheme organiser	paragraph 2(2)
share option	section 516(4)
shares	section 516(4)
F121	F121
...	...
F122	paragraph 31
...	...
tax	[ <sup>F123</sup> section 989 of ITA 2007]
[ <sup>F124</sup> tribunal	section 989 of ITA 2007]
F125	F125
...	...

### Textual Amendments

**F107** Words in Sch. 3 para. 49 Table omitted (6.4.2014) by virtue of [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 120\(a\), 146](#) (with [Sch. 8 paras. 147-157](#))

**F108** Words in Sch. 3 para. 49 substituted (6.4.2005) by [Income Tax \(Trading and Other Income\) Act 2005 \(c. 5\)](#), s. 883(1), [Sch. 1 para. 618\(12\)](#) (with [Sch. 2](#))

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*Changes to legislation:* There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3. (See end of Document for details)

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- F109** Words in Sch. 3 para. 49 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 448\(a\)](#) (with [Sch. 2](#))
- F110** Words in Sch. 3 para. 49 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 448\(b\)](#) (with [Sch. 2](#))
- F111** Words in Sch. 3 para. 49 Table omitted (with effect in accordance with Sch. 2 para. 43 of the amending Act) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 42](#)
- F112** Words in Sch. 3 para. 49 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 448\(c\)](#) (with [Sch. 2](#))
- F113** Sch. 3 para. 49 entry repealed (18.4.2005) by [Commissioners for Revenue and Customs Act 2005 \(c. 11\)](#), s. 53(1), [Sch. 4 para. 122\(f\)](#), [Sch. 5](#); S.I. 2005/1126, art. 2(2)(h)(i)
- F114** Sch. 3 para. 49 Table entry repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 448\(d\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))
- F115** Words in Sch. 3 para. 49 Table inserted (6.4.2014) by [Finance Act 2014 \(c. 26\)](#), [Sch. 8 paras. 120\(b\)](#), 146 (with [Sch. 8 paras. 147-157](#))
- F116** Words in Sch. 3 para. 49 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 448\(e\)](#) (with [Sch. 2](#))
- F117** Words in Sch. 3 para. 49 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 448\(f\)](#) (with [Sch. 2](#))
- F118** Words in Sch. 3 para. 49 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 448\(g\)](#) (with [Sch. 2](#))
- F119** Words in Sch. 3 para. 49 Table substituted (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 448\(h\)](#) (with [Sch. 2](#))
- F120** Words in Sch. 3 para. 49 Table inserted (with effect in accordance with Sch. 2 para. 67 of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 66](#)
- F121** Words in Sch. 3 para. 49 Table omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 347\(2\)](#)
- F122** Words in Sch. 3 para. 49 Table omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 2 para. 13](#) (with [Sch. 2 paras. 16, 17](#))
- F123** Words in Sch. 3 para. 49 Table substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 397\(6\)](#) (with [Sch. 2](#))
- F124** Words in Sch. 3 para. 49 Table inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 347\(3\)](#)
- F125** Sch. 3 para. 49 Table entry repealed (6.4.2007) by [Income Tax Act 2007 \(c. 3\)](#), s. 1034(1), [Sch. 1 para. 448\(j\)](#), [Sch. 3 Pt. 1](#) (with [Sch. 2](#))

**Changes to legislation:**

There are currently no known outstanding effects for the Income Tax (Earnings and Pensions) Act 2003, SCHEDULE 3.